

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 03-017-19-1-5-00942-19
Petitioner: Charles and Janis Lovelace
Respondent: Bartholomew County Assessor
Parcel: 03-87-02-000-000.900-017
Assessment Year: 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. The Lovelaces contested the 2019 property tax assessment for their property located at 4130 South 1100 East in Hartsville. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) valued the property at \$156,300 for 2019. They timely appealed to the Board.
2. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), heard the case telephonically on September 17, 2020. Neither she nor the Board inspected the property.
3. Milo Smith, Certified Tax Representative, represented the Lovelaces. Mr. Smith, Ms. Ginny Whipple, Bartholomew County Assessor, and Dean Layman, Data Analyst, were sworn as witnesses.
4. The parties submitted the following exhibits¹:

Petitioner’s Exhibit 1:	GIS Aerial Photo of the Subject Property
Petitioner’s Exhibit 2:	Property Record Card of Adjacent Parcel
Petitioner’s Exhibit 3:	2013 Property Record Card
Petitioner’s Exhibit 4:	2014 Property Record Card
Petitioner’s Exhibit 5:	2019 Property Record Card-Subject
Petitioner’s Exhibit 6:	2019 Property Record Card-Subject
Petitioner’s Exhibit 7:	Form 115
Petitioner’s Exhibit 8:	Narrative
Petitioner’s Exhibit 9:	Copy of Ind. Code 6-1.1-15-17.2
Petitioner’s Exhibit 10:	Neighborhood Factors
Petitioner’s Exhibit 11:	Residential Land Values
Respondent Exhibit A:	Whipple Resume

¹ The ALJ labeled the Petitioner’s exhibits to simplify references.

Respondent Exhibit B:	Statement of Professionalism
Respondent Exhibit C:	2018 Property Record Card
Respondent Exhibit D:	2019 Property Record Card
Respondent Exhibit E:	Aerial Photo of Subject Parcel

5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices, and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

OBJECTIONS

6. The Assessor made the following objections:
 - a. The Assessor objected to all of the Petitioner's exhibits, contending that they were provided to her after the Board's deadline for small claims rules. She testified that Mr. Smith provided the evidence after 6:00 p.m. on September 10, not a full five business days in advance of the September 17 hearing, and that he should have provided it by 1:00 p.m. on that day. The Board's rules do not set a specific hour in which evidence is to be exchanged. 52 IAC 4-8-2 also provides that evidence in a small claims hearing need be exchanged only if requested by the other party not less than 10 business days before the hearing. The Assessor did not assert that she made such a request. Thus, we overrule the objection and admit the exhibits.
 - b. The Assessor objected to questions Mr. Smith asked during cross examination about the PTABOA proceeding. She objected on the basis that these were not relevant and probative questions as they were offered to address the burden of proof. The burden of proof is relevant to this proceeding. Thus, the objections are overruled.

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2(b) and (d).
8. The subject property's 2018 assessment was \$149,700. For 2019, the original assessment was \$159,200, but the PTABOA lowered the assessment to \$156,500. The Lovelaces argued that the Board should use the original 2019 assessment to determine the burden of proof on the grounds that it was not the intent of the legislature to allow the PTABOA to lower an assessment below the 5% threshold and thus negate the burden shifting provisions.

9. Ind. Code § 6-1.1-15-17.2 (a) in pertinent part states:

Except as provided in subsection (d), this section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property of the prior tax year. In calculating the change in the assessment for purposes of this section, the assessment to be used for the prior tax year is the original assessment for that prior tax year or, if applicable, the assessment for that prior tax year: (1) as last corrected by an assessing official; (2) as stipulated or settled by the taxpayer and the assessing official; or (3) as determined by the reviewing authority.

The “reviewing authority” in this case was the PTABOA. They issued a final value of \$156,500 for 2019 and that is the assessed value under appeal. The Board does not have authority to construe a statute differently when the language is unambiguous, which is the case here. *Aboite v. State Board of Tax Commissioners*, 762 NE 2d. 254 (Ind. Tax Court 2001). Reviewing bodies and courts may only consider legislative intent when the meaning of a statute is unclear. Thus, we are obligated to use the PTABOA’s value when determining the burden of proof. For that reason, the Lovelaces have the burden of proof because the assessment increased by less than 5% from 2018 to 2019.²

SUMMARY OF CONTENTIONS

10. **The Lovelace’s case:**

- a. The Lovelaces contend that the Assessor valued their property too highly. The assessed value should be \$149,700. The Assessor made mistakes in applying methodology to reach the assessed value. *Smith testimony; Pet’r. Exs. 8, 10-11.*
- b. They argued that the sales in their area were sluggish and that the Assessor must remove the neighborhood factor of 1.2. The Assessor previously included a neighborhood factor of 1.08 and raised it to 1.2. When looking at property sales in the neighborhood, the Assessor has no reason to include a neighborhood factor at all. *Smith testimony; Pet’r. Exs. 8, 10-11.*
- c. The Lovelaces also argued that the land beyond the one acre homesite should be assessed as farmland. Mr. Smith testified that the parcel next to the subject property has trees and is classified as agricultural. *Smith testimony; Pet’r. Ex. 1-4.*

² We note that Mr. Smith claimed special knowledge of the Legislature’s intent as the legislative author of the original burden shifting provisions. Testimony from an author cannot amend the meaning of a statute.

11. **The Assessor's Case:**

- a. The Assessor contended that the Lovelaces merely attacked methodology and did not make a prima facie case that the assessment was incorrect or what a correct value should be. Their approach is not supported or allowed by Indiana law. *Whipple testimony.*
- b. The Assessor valued the property for residential market value-in-use. The Lovelaces use this property as their home and value is typically established by comparative sales. The Lovelaces provided no information at all to support an alternative value. *Whipple testimony; Resp't. Ex. C, D.*
- c. The Assessor argued that the subject property is not used for agricultural purposes. A few trees growing next to the residential house do not qualify the property to be classified as agricultural. The trees are part of the yard and are interspersed between the several buildings on the parcel. *Whipple testimony; Resp't. Exs. C-E.*

ANALYSIS

12. The Lovelaces failed to make a prima facie case for any change in the assessment. We reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. Generally, a party may not make a case for changing an assessment simply by showing how the assessment regulations should have been applied. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Instead, the party must offer market-based evidence. *Id.* However, this general principle does not apply to land used for agricultural purposes. The Department of Local Government Finance ("DLGF") promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. See Ind. Code § 6-1.1-4-13.
- c. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. See 2011 REAL PROPERTY

ASSESSMENT GUIDELINES, Ch. 2 at 77-78; *See also* Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. They also classify agricultural land into various types. Depending on the classification, assessors may then apply influence factors in predetermined amounts. *See* 2011 GUIDELINES, Ch. 2 at 85- 96, 98-100. Thus, for agricultural land, true tax value is the amount determined by applying the Guidelines.

- d. The Indiana Code and Guidelines address the assessment and reassessment of agricultural land. Ind. Code § 6-1.1-4-13 provides, in relevant part:

In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use. (b) For purposes of this section, and in addition to any other land considered devoted to agricultural use, any: ... (4) land devoted to the harvesting of hardwood timber; is considered to be devoted to agricultural use. Agricultural use for purposes of this section includes but is not limited to the uses included in the definition of “agricultural use” in Ind. Code § 36-7-4-616(b), such as...timber, trees ... [or] native timber lands. (d) This section does not apply to land purchased for industrial, commercial, or residential uses.

- e. In this appeal, the Lovelaces did not prove that they used their property for agricultural purposes. They only offered evidence that a parcel next to theirs is classified as agricultural, is covered with trees, that it is hard to tell where the property line is for the two parcels, and that other properties were classified as agricultural in use. As the Assessor stated, the existence of trees next to a house in a yard or on the property is not evidence of agricultural use. While their property was previously assessed as agricultural, it is now used as a residential home with a yard and outbuildings. Thus, the Lovelaces did not prove that their property is devoted to agricultural use as required by Ind. Code § 6-1.1-4-13.
- f. We now turn to the subject property’s assessed value. In this appeal, the Lovelaces only offered contentions that the Assessor failed to apply guidelines correctly. As discussed above, this is insufficient. *See Meridian Tower East & West v. Washington Township Assessor*, 805 N.E. 2d 475, 478 (Ind. Tax Ct. 2003). Instead, a taxpayer must provide their own market-based evidence of value, which the Lovelaces did not do. Instead, the Lovelaces contended that upon reviewing neighborhood sales, they saw no reason for the Assessor to apply a neighborhood factor, that the land was classified incorrectly, and that sales in the area were sluggish.
- g. Here, the discussion was insufficient to demonstrate that any of the properties are comparable to the subject. Again, a proponent needs to give specific reasons explaining why a property is comparable. Conclusory statements that a property is “similar” or “comparable” to another

property do not constitute probative evidence. While the properties the Lovelaces relied upon as comparable may share similarities to the subject based on their location or property classification, they did not compare the relevant differences or explain how they affected the market value-in-use of each property.

- h. The Lovelaces failed to show that any portion of the subject property should be reclassified as agricultural. Nor did they provide reliable, market-based evidence showing the assessment is incorrect. Thus, the Lovelaces failed to make a prima facie case for any change in the assessment.

FINAL DETERMINATION

- 13. The Board finds for the Assessor and orders no change to the subject property's 2019 assessment.

ISSUED: December 15, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.